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Single Bench

(2)

CF1002

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 5246 /2006

PETITIONER — Manharan lal Dhiver, aged about 32 years, S/o Shri Kartik Ram Dhiver, R/o Village Tarenga, Tahsil *Bhatapara, Distt. Raipur (C.G.)*

P.R. No. 528926
Presented Sanjay Agrawal
Dated 21/9/06

VERSUS

RESPONDENTS

1. The State of Chhattisgarh, Through Secretary, Panchayat and *Rural Department, D.K.S. Bhawan,* Raipur

2. Joint Director Panchayat and Social Welfare, *Raipur (C.G.)*

3. Chief Executive Officer, Janpad Panchayat, *Bhatapara* Distt. Raipur

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4. Sarpanch, Gram Panchayat Tarenga, Tahsil Bhatapara *Distt.Raipur.*

5. The Collector Raipur

6. Parmanand Kashyap, Sahayak Gram Panchayat Adhikari, Tarenga, *Tahsil Bhatapara, Distt. Raipur*

WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (s) No. 5246 of 2006

Petitioner : Manharan lal Dhiver

Versus

Respondents : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice Satish K. Agnihotri.

Shri Parag Kotecha, counsel for the Petitioner.
Shri Sumesh Bajaj, Govt. Advocate for the State/respondents No. 1, 2 and 5.

ORDER

(Passed on 4th October, 2006)

1. The petitioner, while working as Panchayat Karmi, was appointed as Panchayat Secretary in the year 1995.

2. The Prescribed Authority i.e. Chief Executive Officer, Janpad Panchayat, Bhatapara, Distt. Raipur, by order dated 6.9.2006 (Annexure P/2), suspended the petitioner from working as Panchayat Secretary, Gram Panchayat Tarenga during pendency of the departmental enquiry on the basis of serious allegations against him.

3. Be that as it may, the impugned order dated 6.9.2006 is not in the nature of removal order, but it appears to be the order of suspension facilitating smooth conduct of enquiry against the petitioner.

4. Learned counsel appearing for the petitioner submits that the impugned order dated 6.9.2006 was passed by the Chief Executive Officer, Janpad Panchayat Bhatapara, who is not the

Prescribed Authority for appointing Panchayat Secretary under Section 69 (1) of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "the Adhiniyam, 1993"). Thus, the impugned suspension order is bad in law, unjust and without jurisdiction.

5. I have heard learned counsel for the petitioner and perused petition and documents annexed thereto. It is true that the Joint Director/Deputy Director, Panchayat and Social Welfare Department is the competent officer under Section 69 (1) of the Rules, 1993 as per notification No. 705/P/22/2003 dated 19.5.2003 issued by the State Government.

6. The Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules, 1966") provides for suspension under second proviso to Rule 9, if the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made. The Rules 1966 are applicable in case of Panchayat employee in respect of such fields, which are not governed as prescribed under the Adhiniyam, 1993 and the Rules made thereunder i.e. Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short "the Rules, 1999"). Thus, the Rules 1966 are applicable to all the employees of the State Governments/Panchayats. The facts of reporting suspension to

the Joint Director/Deputy Director, Panchayat and Social Welfare Department, Raipur is borne out from the impugned order itself, which has been marked to the concerned authority. It is, therefore, held that the impugned suspension order was properly passed by the respondent No. 3.

7. It is well settled principle of law that the suspension is temporary and it does not involve punishment with civil consequences. Suspension means a temporary deprivation of the functions not amounting to any reduction of his rank or his status. The employee under suspension continues to be a Government Servant, he is not permitted to work keeping in view pendency of departmental enquiry to avoid undue influence in the proceedings of departmental enquiry and likely tampering with on records. At this stage, it is not necessary to go into the charges levelled against the petitioner because it may prejudice the case of the parties in the pending departmental enquiry.

8. For the reasons stated-above, no case has been made out for exercise of extraordinary power under Article 226 of the Constitution of India. Thus, this writ petition is dismissed summarily.

Sd/-
Satish K. Agnihotri
Judge

Subhash